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**Attorneys for Petitioner**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF OREGON**

**FRANK E. GABLE,**

**Case No. 3:07-cv-00413-AC**

**Petitioner,**

**RESPONSE TO RESPONDENT'S  
MOTION TO STAY**

**v.**

**MAX WILLIAMS,**

**Respondent.**

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Petitioner Frank Gable, through counsel, hereby responds to the State's motion to stay this Court's April 18, 2019, order that the State of Oregon, through Marion County, retry Mr. Gable within ninety days. CR 171. In the interest of conserving taxpayer and judicial resources, Mr. Gable does not oppose a stay of any Marion County retrial pending completion of the State's appeal.

Mr. Gable now files, concurrent herewith, an unopposed motion for release pending appeal. The State has revised its position since filing the stay motion and now does not oppose Mr. Gable's release on conditions pending appeal. The parties are continuing to confer on what conditions are appropriate, and attempting to narrow the issues that need to be resolved by the Court. The parties will notify the Court if an agreement is reached, particularly if the agreement obviates the need for

the June 26 hearing.

A motion to stay a judgment and a motion for release pending appeal are opposing sides of the same analysis. Fed. R. App. P. 23(c) establishes a presumption of release pending appeal. Fed. R. Civ. P. 62 authorizes a district court to stay its judgment pending appeal. The factors to be considered are set out in *Hilton v. Braunskill*, 481 U.S. 770, 776-77 (1987), and are analyzed in Mr. Gable's motion for release and the memorandum in support thereof.

Respectfully submitted this 31st day of May, 2019.

/s/ Nell Brown

Nell Brown

/s/ Mark Ahlemeyer

Mark Ahlemeyer

Attorneys for Petitioner